

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

MDL No. 2419
Master Dkt. 1:13-md-02419-FDS

THIS DOCUMENT RELATES TO:

All actions naming Specialty Surgery Center.

**NOTICE OF STATUS OF INSURANCE DECLARATION ACTION INVOLVING
INSURER OF SPECIALTY SURGERY CENTER**

The Plaintiffs' Steering Committee ("PSC") hereby files notice regarding the status of ongoing litigation involving tort victims injured by tainted MPA from injections received at the Specialty Surgery Center ("SSC") in Crossville, Tennessee. As the PSC indicated at the last status conference, State Farm Fire and Casualty Company ("State Farm"), an insurer for SSC which issued two policies to SSC, filed a declaration action in the United States District Court for the Middle District of Tennessee seeking a declaration of "no coverage" for policies issued by State Farm for SSC.

Certain members of the PSC, being recently appointed as lead counsel for the tort-victims in the declaration action, filed a motion to strike or stay on the grounds that the declaration action was aimed at circumventing this Court's ruling in its August 29, 2014 Order holding that, as a matter of law, plaintiffs could pursue claims against SSC under the Tennessee Products Liability Act (the "TPLA").¹ A copy of the memorandum in support of this motion is attached hereto as Exhibit A.²

¹ Dkt. No. 1360.

² Exhibit A is attached hereto without including the unreported cases as originally filed in the United States District Court for the Middle District of Tennessee due to exceeding the file size requirements of this Court's ECF system.

On September 3, 2015, State Farm filed its opposition. A copy of which is attached as Exhibit B. In that opposition, State Farm readily concede that they are asking the Middle District of Tennessee Court to rule on the issues already decided by this Court. Specifically, they claim in their conclusion that:

State Farm filed this action in order to have the Court decide its contractual obligations to SSC and Dr. Lister. As part of that determination, the Court will need to address State Farm's contention that healthcare providers such as SSC and Dr. Lister cannot be "sellers" for purposes of imposing liability under the TPLA as a matter of law. There is no reason that this Court should defer that question simply because an MDL pending in Massachusetts implicates the same issue. State Farm submits that the question is properly before this Court and more appropriately decided by this Court..³

SSC also filed its own response to the tort-victim's motion to stay where it conceded that "[t]he Tennessee SSC Defendants agree with the MDL Plaintiffs on one issue, the viability of the product liability claim in the underlying MDL cases is likely the central issue in this Court's decision as to whether the State Farm policies offer coverage."⁴ They then provide several pages of argument which essentially rehashes the same arguments made before this Court in Specialty Surgery Center's Motion to Dismiss briefing.⁵ A copy of SSC's response is attached as Exhibit C.

The PSC submits this issue has already been ruled upon by this Court, and notifies the Court of the status of these arguments in the pending litigation currently in Tennessee.

³ Ex. B, PageID 707-708.

⁴ Ex. C, PageID 742.

⁵ *Id.* at PageID 745-749.

Dated: September 10, 2015

Respectfully submitted,

/s/ Benjamin A. Gastel

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Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I, Benjamin A. Gastel, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: September 10, 2015

/s/ Benjamin A. Gastel
Benjamin A. Gastel